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REMARKS

Claims 1-4, 7, and 12-18 are rejected under 35 USC 103 (a) as being unpatentable over Acampora (USPN 6,314,163) in view of Porter *et al.* (USPN 6,687,503), further in view of Meier *et al.* (USPN 6,826,165), further in view of Bojeryd (USPN 5,946,622), further in view of Gil *et al.* (USPN 6,424,836).

Applicant thanks the Examiner, Mr. Gonzalez, and his SPE, Mr. Corsaro, for their assistance during an Interview which was held on 21 February 2007. As discussed during the Interview, the subject rejection amounts to a piecemeal, hindsight reconstruction of Applicant's claimed invention. The Examiner relies on no less than five references to reject a claim that comprises five claim elements, where a single reference is applied for each element of the claim.

While the Examiner correctly recites the fact in queries of Graham v. John Deere Company at Item 2 of the Office Action, the Examiner neglects to follow the teachings of In re Vaeck (947 F.2d 488, 20 USPQ 2d 1438 (Fed. Cir. 1991)), which requires that to establish a *prima-facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill of the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference, or references when combined, must teach or suggest all the claim limitations.

In this regard, the burden is on the Examiner to point out how the references the desirability of doing what the inventor has done. It is also the duty of the Examiner to explain why the combination of the teachings is proper. There mere fact that references

can be combined or modified does not render the result in combination obvious unless the prior art also suggests the desirability in combination. Further, a statement by the Examiner that modifications of the prior art can make the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teaching all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima-facie* case of obviousness without some objective reason to combine the teachings of the references.

The foregoing and further explanation of the analysis required of the Examiner are set forth in Chapter 2100 of the Manuel of the Patent Examining Procedure. Here the Examiner has not provided any support or even addressed the issue of motivation to combine the references. Nor has the Examiner addressed the issue of likelihood of success. Further, the Examiner has not considered the invention as a whole as is required, but merely performed a piecemeal examination with an eye to finding a single reference for each of the elements of the claim. In this regard, the examination and rejection are grievously erroneous and should be withdrawn. As discussed during the Interview, it was agreed that, should a further rejection be provided instead of a Notice of Allowance, that the rejection would not be a final rejection.

Applicant also notes that the Examiner has taken Official Notice that Applicant's module for interference management and sector reuse that comprises network management or frequency, time, and directionality are well known control elements and techniques used in wireless communications art. Applicant respectfully disagrees. Official Notice without documentary evidence to support an Examiner conclusion is permissible only in some circumstances. While, "Official Notice" may be relied upon, these circumstances should be rare . . . (MPEP 2144-03). Where the Examiner takes such Notice, the basis for reasoning must be set forth explicitly. The Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his conclusion of common knowledge.

Accordingly, Applicant traverses Examiner's assertion of Official Notice. The noticed art of the Examiner is not considered to be common knowledge or well known in the art because the module referred to by the Examiner in the claim is one that is specifically adapted for operation in combination with the rest of the elements of Applicant's claimed invention. Applicant's specification teaches this module. The Examiner points to nothing other than his own personal knowledge as the basis for indicating that the module necessary to function in connection with Applicant's invention is well known in the art. For example, Applicant's claim is limited to a mesh access network. In taking Official Notice, did the Examiner refer to an interference management module for a mesh access network? Is such module adapted for use where each sector comprises a plurality of terminal nodes and the terminal nodes comprise both indoor terminal nodes and outdoor terminal nodes? Is the well-known module used in connection with the network where the nodes in each sector are arranged in a tree structure starting from a base station?

Because the Examiner's improperly taking Official Notice, Applicant requests that the Examiner either withdraw such statement or provide evidentiary support therefore.

In view of the foregoing, the rejection under 35 USC 103 (a) is deemed traversed in withdrawal thereof is earnestly solicited. Because the Application has now been examined, it would be appropriate for the Examiner to respond with a Notice of Allowance.

Applicant notes the various dependent claims have also been rejected, based upon a combination of references. However, these rejections are deemed moot in view of the Applicant's statements above in connection with the rejection directed to the sole independent claim in the Application.

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Should the Examiner deem it helpful, he is encouraged to contact Applicant's Attorney, Michael A. Glenn at (650) 474-8400.

Respectfully Submitted,

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